

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KFD ENTERPRISES, INC., ) Case No. 08-04571-SC  
 )  
Plaintiff, ) ORDER GRANTING MOTIONS FOR  
 ) APPROVAL OF REVISED  
v. ) SETTLEMENT  
 )  
CITY OF EUREKA, et al. )  
 )  
Defendants. )  
 )  
AND RELATED COUNTER- AND CROSS- )  
CLAIMS )  
 )  
 )

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**I. INTRODUCTION**

Plaintiff KFD Enterprises, Inc. ("KFD") brings this action against a number of parties seeking contribution for contamination of a property located at 2907 E Street, Eureka, California (the "Property"). KFD reached a settlement with Environmental Resolutions, Inc. and Cardno USA, Inc. (collectively "ERI"), as well as Union Oil Company of California, Chevron Corporation, and Unocal Corporation (collectively, "Union Oil"). ERI and Union Oil now move for approval of their settlement agreement with KFD. ECF

1 No. 655 ("ERI Mot."), 653 ("Union Oil Mot."). Defendant City of  
2 Eureka ("Eureka") opposes both motions. ECF Nos. 59 ("Opp'n").<sup>1</sup>  
3 This matter is appropriate for resolution without oral argument per  
4 Civil Local Rule 7-1(b). For the reasons set for the below, the  
5 motions are GRANTED.

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7 **II. BACKGROUND**

8 KFD commenced dry cleaning operations on the Property, which  
9 included use of PCE, on or about 1980. On or about 1998, petroleum  
10 hydrocarbon and volatile organic compound contamination was  
11 discovered on the Property, primarily PCE and TCE. Union Oil,  
12 which owned the Property from 1964 through 1979, investigated the  
13 contamination and hired ERI to install monitoring wells on the  
14 Property.

15 In or around 2008, KFD brought suit against several parties,  
16 including Eureka and Union Oil, alleging that they had contributed  
17 to the contamination on the Property. Among other things, KFD has  
18 asserted state law claims and claims under the federal  
19 Comprehensive Environmental Response, Compensation, and Liability  
20 Act ("CERCLA"), 42 U.S.C. § 9601 et seq.

21 ERI was brought into the action via a third-party complaint,  
22 and KFD later named ERI as a direct defendant in the case. KFD  
23 alleges that ERI's monitoring wells contributed to the  
24 contamination on the Property, and that ERI was acting as Union  
25 Oil's agent when it installed the monitoring wells. Eureka has  
26 also filed a cross-complaint against Union Oil.

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28 <sup>1</sup> The movants have filed replies in support of their motions. ECF  
Nos. 660 ("Union Oil Reply"), 661 ("ERI Reply").

1 KFD and ERI reached a settlement agreement on or around June  
2 6, 2013. The key terms of the settlement were as follows: ERI  
3 would pay KFD \$450,000 in exchange for a release of all claims by  
4 KFD arising out of or related to the action, or related to the  
5 monitoring wells installed by ERI at the Property. This included a  
6 release of KFD's claims against Union Oil relating to the  
7 monitoring wells installed by ERI, but not ERI's other claims  
8 against Union Oil. ERI would execute a mutual release in favor of  
9 KFD. KFD would provide indemnity to ERI and hold it harmless from  
10 any third-party claims relating to its claims against ERI in the  
11 instant action. This indemnity extended to Union Oil as to the  
12 claims relating to the monitoring wells installed by ERI. Union  
13 Oil was not a party to the settlement agreement.

14 In an Order dated November 6, 2013, the Court declined to  
15 approve the KFD-ERI settlement to the extent that it pertained to  
16 Union Oil. ECF No. 641 ("Nov. 6 Order"). The Court found that the  
17 parties lacked standing to dismiss Eureka's claims against Union  
18 Oil. Id. at 5. Further, the Court was not convinced that the  
19 proposed settlement would not "prejudice Eureka's right to seek  
20 indemnification or contribution from Union Oil with respect to one  
21 or more of the other claims or cross claims filed against Eureka in  
22 this matter." Id. at 6.

23 KFD and ERI subsequently revised their settlement agreement to  
24 include Union Oil as a party. As in the original settlement  
25 agreement, KFD has agreed to release all claims against ERI  
26 "arising out of, involving, or related in any way to any all  
27 matters alleged in the Action" in consideration for a payment of  
28 \$450,000. ECF No. 655-5 Ex. H ("Rev. Agr.") § 3.1. KFD has also

1 agreed to release Union Oil "from all Claims relating to the  
2 monitoring well at the Property installed by ERI." Id. The  
3 agreement further provides: "notwithstanding this release, KFD  
4 maintains several claims against Union Oil . . . that are not  
5 related in any way to the monitoring wells installed by ERI, and  
6 such claims are not part of this release." Id.

7 Eureka objects to the revised settlement arguing, among other  
8 things, that settling parties have not addressed the concerns  
9 raised in the November 6 Order.

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11 **III. DISCUSSION**

12 Eureka objects to the proposed settlement agreement on a  
13 number of grounds. First, Eureka argues that that the agreement is  
14 invalid because Union Oil has provided no consideration. Opp'n at  
15 2-3. As Eureka points out, ERI's insurers have offered to make a  
16 \$450,000 payment on behalf of both ERI and Union Oil. Id. at 4.  
17 Eureka contends that the settling parties should be forced to  
18 explain why these insurers have agreed to make payments on behalf  
19 of Union Oil, a party they do not insure. Id.

20 These objections are unavailing. Union Oil and ERI have  
21 agreed to pay KFD \$450,000 in consideration for the release of  
22 certain claims. This is sufficient. Eureka cites no authority  
23 standing for the proposition that consideration is invalid unless  
24 it comes from a particular party's bank account. Moreover, while  
25 California law does require the parties to explain the material  
26 terms of the settlement agreement, it does not require the settling  
27 parties to explain their relationship with an insurance carrier.  
28 The parties have provided the Court with a copy of the revised

1 settlement, and the Court is satisfied that they have sufficiently  
2 described the conditions of the settlement.

3       Next, Eureka argues that it would be prejudiced by the  
4 proposed settlement because the settlement releases certain claims  
5 that it might have against Union Oil. Opp'n at 6-7. Eureka  
6 asserts that it has claims against Union Oil beyond the monitoring  
7 well claims released under the settlement agreement. Thus, Eureka  
8 reasons, an approval of the agreement would prejudice Eureka's  
9 right to bring valid cross-claims. Id. Eureka further argues that  
10 it has direct liability claims against Union Oil relating to the  
11 monitoring wells that would be released by the proposed settlement  
12 agreement. Id. at 7-8. Eureka contends that KFD did not bring  
13 such claims, and, therefore, it would be improper for KFD to  
14 release claims that it did not bring. Id.

15       These arguments are also unavailing. To the extent that  
16 Eureka does have claims against Union Oil beyond those related to  
17 the monitoring wells, those claims are unaffected by the  
18 settlement. See Rev. Agr. § 3.1. In any event, based on Eureka's  
19 fourth amended counter-claim and cross-claim, it is entirely  
20 unclear what claims Eureka has against Union Oil other than those  
21 related to the monitoring wells. See ECF No. 355 ("4ACC").  
22 Eureka's opposition brief does nothing to clarify the issue.

23       Eureka's argument that the Court should not dismiss its direct  
24 liability claim against Union Oil is also unpersuasive. As an  
25 initial matter, it is unclear that Eureka does have a unique direct  
26 liability claim against Union Oil. Eureka relies on paragraph 34  
27 of its 4ACC, which states: "Eureka is informed, believes and  
28 alleges that [Union Oil] hired and/or directed ERI for certain

1 aspects of the drilling, installation, control, ownership,  
2 operation and maintenance of these monitoring wells, and in so  
3 doing, ERI was acting as the agent for [Union Oil]." There is no  
4 discernible difference between this allegation and KFD's claim that  
5 Union Oil should be held vicariously liable for the actions of ERI.  
6 More importantly, even if Eureka does have a unique direct claim  
7 against Union Oil, dismissal of that claim will not prejudice  
8 Eureka. While Eureka's putative direct claim might affect the  
9 apportionment of damages between Eureka and Union Oil, the issue of  
10 apportionment is moot since both parties are settling for a lump  
11 sum of \$450,000. Finally, the only relief sought by Eureka is  
12 indemnification and contribution for any damages imposed against it  
13 for contamination of the Property. Eureka has not explained how an  
14 approval of the settlement would affect its right to seek  
15 indemnification or contribution.

#### 16 17 **IV. CONCLUSION**

18 For the foregoing reasons, ERI and Union Oil's motion to  
19 approve their settlement with KFD is granted. The provisions of  
20 the Uniform Comparative Fault Act will apply with respect to the  
21 effect of the settlement as to both federal and state law claims.  
22 All claims asserted by KFD against ERI and Union Oil relating to  
23 the monitoring wells installed by ERI on the Property are hereby  
24 DISMISSED with prejudice. All claims against ERI and Union Oil  
25 regarding the monitoring wells installed by ERI, including  
26 contribution and indemnity claims that have been or could have been  
27 asserted by any person or entity, in this action or otherwise,  
28 whether such claims are or could be brought pursuant to federal or

1 state law, are hereby BARRED. ERI's counterclaims against KFD are  
2 DISMISSED with prejudice. All pending cross-claims against ERI in  
3 this action are hereby DISMISSED with prejudice.

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5 IT IS SO ORDERED.

6  
7 February 5, 2014



8 UNITED STATES DISTRICT JUDGE  
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